

## **REMARKS**

### **I. General Remarks**

Claims 1-22 are pending in this application. Claim 22 has been amended herein.

Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,179,161 to Kovens et al. (hereinafter “Kovens”). Claims 12-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,986,615 to Hieb et al. (hereinafter “Hieb”). Claims 1-5, 9-16, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,302,293 to Wittern, Jr. et al. (hereinafter “Wittern”). Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,529,207 to Oden, et al. (hereinafter “Oden”). Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hieb in view of Wittern.

Applicant respectfully traverses the rejections as set forth in more detail below. Applicant submits that each of the amended claims includes allowable subject matter, and is in condition for allowance. Thus, Applicant respectfully submits that the rejections to claims 1-22 should be withdrawn, and these claims should be passed to issuance.

### **II. Remarks Regarding the 35 U.S.C. § 102(b) Rejections**

#### **A. Kovens Does Not Anticipate Applicant’s Claims Because Kovens Does Not Teach Each and Every Limitation Recited in Applicant’s Claims**

Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,179,161 to Kovens et al. (hereinafter “Kovens”). Applicant respectfully submits that Kovens does not anticipate Applicant’s independent claims 1 and 12. Kovens, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant’s claims. “A claim is anticipated only if each and every

element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131.

In particular, Kovens fails to show a recited element of independent claims 1 and 12, a dispenser having a retractable gauge assembly wherein the dispenser is rotatable about an axis. While Kovens appears to disclose a vertical hopper assembly for vending flat cards, nowhere does Kovens teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly.

Because the cited reference does not teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly, the cited reference does not teach or suggest to one of ordinary skill in the art how to appreciate the advantages of a retractable gauge assembly. In particular, a rotatable dispenser assembly with a retractable gauge assembly may allow, for example, multiple vending products to be dispensed from a rotatable dispenser assembly. *See e.g.*, Applicant’s Specification at ¶¶ 6-7. This feature may allow for a quicker vending and/or a finer control of the vending products. Thus, the prior art of Kovens does not achieve the advantages of a retractable gauge step for cooperating with vending products in a rotatable dispenser assembly so as to allow, for example, vending products of varying sizes to be held in place by a gauging device, then unseated and dispensed as a bucket or dispensing assembly rotates.

Accordingly, Kovens cannot anticipate Applicant’s claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1-22 should be withdrawn, and these claims should be placed in a condition for allowance.

**B. Hieb Does Not Anticipate Applicant's Claims Because Hieb Does Not Teach Each and Every Limitation Recited in Applicant's Claims**

Claims 12-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,986,615 to Hieb et al. (hereinafter "Hieb"). Applicant respectfully submits that Hieb does not anticipate Applicant's independent claim 12. Hieb, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Hieb fails to show a recited element of independent claim 12, a dispensing assembly having a retractable gauge assembly wherein the dispensing assembly is rotatable about an axis. While Hieb appears to disclose certain ribs or ramps to guide vending products down a vertical vending chute, nowhere does Hieb teach a dispensing assembly rotatable about an axis, the dispensing assembly having a retractable gauge assembly.

Because the cited reference does not teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly, the cited reference does not teach or suggest to one of ordinary skill in the art how to appreciate the advantages of a retractable gauge assembly. In particular, a rotatable dispenser assembly with a retractable gauge assembly may allow, for example, multiple vending products to be dispensed from a rotatable dispenser assembly. *See e.g.*, Applicant's Specification at ¶¶ 6-7. This feature may allow for a quicker vending and/or a finer control of the vending products. Thus, the prior art of Hieb does not achieve the advantages of a retractable gauge step for cooperating with vending products in a rotatable dispenser assembly so as to allow, for example, vending products of varying sizes to be held in place by a gauging device, then unseated and dispensed as a bucket or dispensing assembly rotates.

Accordingly, Hieb cannot anticipate Applicant's claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 12-22 should be withdrawn, and these claims should be placed in a condition for allowance.

**C. Wittern Does Not Anticipate Applicant's Claims Because Wittern Does Not Teach Each and Every Limitation Recited in Applicant's Claims**

Claims 1-5, 9-16, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,302,293 to Wittern et al. (hereinafter "Wittern"). Applicant respectfully submits that Wittern does not anticipate Applicant's independent claims 1 and 12. Wittern, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Wittern fails to show a recited element of independent claims 1 and 12, a dispenser having a retractable gauge assembly wherein the dispenser is rotatable about an axis. While Wittern appears to disclose a retainer member for blocking the front of a column of a vertical stack of vendable items, nowhere does Wittern teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly.

Because the cited reference does not teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly, the cited reference does not teach or suggest to one of ordinary skill in the art how to appreciate the advantages of a retractable gauge assembly. In particular, a rotatable dispenser assembly with a retractable gauge assembly may allow, for example, multiple vending products to be dispensed from a rotatable dispenser assembly. *See e.g.*, Applicant's Specification at ¶¶ 6-7. This feature may allow for a quicker vending and/or a finer control of the vending products. Thus, the prior art of Wittern does not achieve the

advantages of a retractable gauge step for cooperating with vending products in a rotatable dispenser assembly so as to allow, for example, vending products of varying sizes to be held in place by a gauging device, then unseated and dispensed as a bucket or dispensing assembly rotates.

Accordingly, Wittern cannot anticipate Applicant's claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1-5, 9-16, and 20-22 should be withdrawn, and these claims should be placed in a condition for allowance.

**D. Oden Does Not Anticipate Applicant's Claims Because Oden Does Not Teach Each and Every Limitation Recited in Applicant's Claims**

Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,529,207 to Oden, et al. (hereinafter "Oden"). Applicant respectfully submits that Oden does not anticipate Applicant's independent claims 1 and 12. Oden, standing alone, does not contain each and every element of the claimed invention and as such, the reference cannot anticipate Applicant's claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131.

In particular, Oden fails to show a recited element of independent claims 1 and 12, a dispenser having a retractable gauge assembly wherein the dispenser is rotatable about an axis. While Oden appears to disclose a ramp with a retainer for guiding vending products down a vertical vending chute or hopper, nowhere does Oden teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly.

Because the cited reference does not teach a dispenser rotatable about an axis, the dispenser having a retractable gauge assembly, the cited reference does not teach or suggest to one of ordinary skill in the art how to appreciate the advantages of a retractable gauge assembly.

In particular, a rotatable dispenser assembly with a retractable gauge assembly may allow, for example, multiple vending products to be dispensed from a rotatable dispenser assembly. *See e.g.*, Applicant's Specification at ¶¶ 6-7. This feature may allow for a quicker vending and/or a finer control of the vending products. Thus, the prior art of Oden does not achieve the advantages of a retractable gauge step for cooperating with vending products in a rotatable dispenser assembly so as to allow, for example, vending products of varying sizes to be held in place by a gauging device, then unseated and dispensed as a bucket or dispensing assembly rotates.

Accordingly, Oden cannot anticipate Applicant's claims. Thus, the rejection under 35 U.S.C. § 102(b) of claims 1-22 should be withdrawn, and these claims should be placed in a condition for allowance.

### **III. Remarks Regarding the 35 U.S.C. § 103(a) Rejections**

Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heib in view of Wittern. Applicant respectfully traverses.

A prima facie case of obviousness requires a showing that all claim limitations be taught or suggested by the art. M.P.E.P. § 2143.03. Applicant respectfully submits that the cited references fail to establish a prima facie case of obviousness in that, even if combined, they still fail to teach each and every limitation of the Applicant's independent claims 1 and 12.

In particular, neither reference teaches a recited element of independent claims 1 and 12, a dispenser having a retractable gauge assembly wherein the dispenser is rotatable about an axis. While Heib and Wittern teach certain ramps and retaining members situated in vertical vending hoppers to guide vending products of various sizes, neither of these devices is used as a

retractable gauge step in a rotating dispensing assembly. Accordingly, the cited references cannot be used to establish a valid prima facie case of obviousness.

Because the cited references do not teach a dispenser rotatable about an axis with the dispenser having a retractable gauge assembly, the cited references do not teach or suggest to one of ordinary skill in the art how to appreciate the advantages of a retractable gauge assembly in a rotatable dispenser assembly as explained, for example, in Applicant's Specification as follows:

[0006] In operation, a motor or other rotational means rotates the bucket about its axis. A gauging device, appropriately located below the bucket, is used to create steps of various sizes, which generally correspond to the length of the individual cans or bottles being dispensed, i.e., the depth of the products. The opening in the bucket is of a sufficient size so that when rotated to a certain point, the first bottle or can is free to fall out of the bucket dispenser and into the product chute through which it is dispensed to the customer, while the next-to-vend bottle or can remains in the bucket, held by the next gauge step.

[0007] During subsequent vends, the bucket rotates to expose the next bottle or can, allowing it to fall. After all products have been dispensed from the bucket, the dispensing mechanism continues through the reload phase of the vend cycle whereby the next row of products enter the bucket in preparation for the subsequent vending cycles. Thus, products are initially seated within the bucket, and may be held in place by a gauging device, but are unseated and dispensed as the bucket rotates.

Applicant's Specification at ¶¶ 6-7. Accordingly, a rotatable dispenser assembly with a retractable gauge assembly may allow, for example, multiple vending products to be dispensed from a rotatable dispenser assembly in a single rotation cycle. *See e.g.*, Applicant's Specification at ¶¶ 6-7. This feature may allow for a quicker vending and/or a finer control of the vending products. Neither of the cited references teach one of ordinary skill in the art how to arrive at Applicant's specific combination of elements to achieve a controlled dispensing of vending

products that vary in size from a rotatable dispenser assembly. Thus, the prior art of Heib and Wittern do not achieve the advantages of a retractable gauge step for cooperating with vending products in a rotatable dispenser assembly so as to allow, for example, vending products of varying sizes to be held in place by a gauging device, then unseated and dispensed as a bucket or dispensing assembly rotates. Accordingly, the cited references fail to teach recited limitations of Applicant's independent claims 1 and 12.

In summary, a prima facie case of obviousness has not been established with reference to the rejected claims. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) of claims 1-22 be withdrawn, and these claims should be allowed.

#### **IV. Conclusion**

Applicant respectfully submits that the rejection of claims 1-22 should be withdrawn, and these claims should be passed to issuance.

Respectfully submitted,



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